No. 21,936

# In the United States Court of Appeals for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

*v.*

CONSTRUCTION & GENERAL LABORERS' UNION LOCAL 270, INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS' UNION OF AMERICA, RESPONDENT

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**On Petition for Enforcement of an Order of the National Labor Relations Board**

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## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## AUTHORITIES CITED

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## JURISDICTION

This case is before the Court upon the petition of the Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, *et seq.*),[1] for enforce-

[1] Pertinent provisions of the Act are set forth *infra*, pp. 20-22.

ment of its order, issued against respondent on November 29, 1966 (R. 31-32, 37-38)[2] and reported at 161 NLRB No. 117. This Court has jurisdiction of the proceeding, the unfair labor practices having occurred on the campus of Stanford University in Palo Alto, California. No issue as to the Board's jurisdiction is presented (R. 16; Tr. 9).

## STATEMENT OF THE CASE

### I. The Board's Findings of Fact

The Board found that respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging an employee of a neutral employer to cease performing services, and by threatening, coercing and restraining neutral employers, all with an object of forcing those employers to cease doing business with Hans V. Eggli, and for the purpose of forcing Eggli to recognize and bargain with respondent, although respondent had not been certified as the representative of Eggli's employees under Section 9 of the Act. The evidence on which these findings are based is summarized below.

#### A. *Background; Aguilar threatens White's superintendent with a work stoppage*

In the spring of 1965,[3] Howard J. White, Inc., was general contractor for the construction of the Mc-

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[2] References designated "R." are to Volume I of the record reproduced according to Rule 10 of the Rules of this Court. "Tr." references are to the reporter's transcript of testimony as reproduced in Volume II of the record.

[3] All dates hereafter are in 1965, unless otherwise specified.

Cullough Building, a research building at Stanford University. White had subcontracted the landscaping work on the project to the firm of Hans Eggli (R. 17; Tr. 43). On the morning of April 6, Gregory Aguilar, respondent Union's assistant business representative, visited the jobsite and approached laborer Aurelio Ramirez, who was digging a ditch. Aguilar told Ramirez that he was "from the Union" and asked the latter for his union card. Ramirez answered that he did not have a card. Aguilar next asked Ramirez who employed him and what salary he was earning. Ramirez answered that he worked for Eggli and that his salary was $2.85 per hour. Aguilar said that Ramirez was "supposed to get from $3 up for the job" and asked the latter "how come" he did not have a union card (R. 17; Tr. 36-37). Ramirez answered that most of Eggli's work was done in private homes and that Eggli had "no trouble with the Unions" *(ibid.)*. After some further conversation, Union Representative Aguilar said that he would return at 1:00 o'clock and speak to Eggli (R. 17; Tr. 38).

When Aguilar returned that afternoon, he did not meet Eggli. He did, however, approach Alexander McCullough, White's superintendent at the Stanford project. Aguilar asked McCullough if he knew that Eggli was non-union. McCullough replied affirmatively. Aguilar asked why White permitted non-union personnel on the job, since all of White's employees were union members. McCullough replied that Eggli had a contract to do the work, and that,

as far as he (McCullough) was concerned, Eggli would remain on the job. Aguilar asked if "there was any way [White] could reconcile the thing to where Eggli would have to leave" and, if that could not be accomplished, "then he [Aguilar] would ask his Union personnel on the job to leave" (R. 18; Tr. 44). Aguilar added that "if Eggli wasn't going to leave, then he would ask his Union members to leave the job". (R. 1819; Tr. 44, 59-61.) Later that day, McCullough reported to Eggli the substance of his conversation with Aguilar, and asked Eggli "how he intended to proceed with his work," in view of the Union's objections to "his having non-Union personnel on the job." Eggli replied that he would "complete the job in some manner [although] he didn't know just how [he] would go about it . . . (R. 20; Tr. 46-47).

**B. *Aguilar induces and coerces B & C to cease work***

On the following day, April 7, Union Representative Aguilar again visited the jobsite. He approached Superintendent McCullough and asked him if Eggli's employees were on the job that day. McCullough replied, truthfully, that they were not (R. 20; Tr. 45-46).[4] Aguilar asked McCullough what he and White

[4] At the Board hearing, during cross-examination by counsel for respondent, McCullough was asked why Eggli and his men were not working that day. McCullough replied as follows (Tr. 61-62):

> A. The reason he was not working was that he was aware of the situation as such. He had told me that when I had asked him how he was going to accomplish his

had decided to do about Eggli. McCullough answered that he did not know. Aguilar also told McCullough that, as a union man, McCullough had a duty to "make sure that there were no non-union personnel on the job" (R. 20; Tr. 46).

Aguilar then approached employee Jerry Clement, who was digging a ditch with a trenching machine. Clement was employed by B & C, Inc. of Burlingame, California, which had been retained by Eggli, pursuant to an oral contract, for the purpose of digging trenches for an irrigation system. Clement, although nominally a working foreman at B & C, which was owned by his father, had no employees under him at the McCullough Building jobsite, as he was the only B & C employee assigned to that project (R. 21; Tr. 19, 22, 27, 29, 83). Aguilar tapped Clement on the shoulder and asked for his union card. Clement replied that he did not have his union card with him but that he had a work clearance from Local 389,

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work. He told me that he didn't know how he was going to accomplish it, but he couldn't work under the conditions as they were.

The cross-examination continued with the following questions and answers (Tr. 62):

Q. . . . What conditions were in existence that would lead him to say that?

A. He told me that he was being harassed.

* * * *

Q. (By Mr. Carroll) Mr. McCullough, was it your understanding that Mr. Eggli was not working on this day which we are speaking about solely because he was fearful of potential Union harassment?

A. Right.

Construction and General Laborers' Union, of which he was a member. When Clement had difficulty locating his clearance, Aguilar accused him of working for Eggli and told him that he "would have to leave the job, that this is a Union job and that [he] had to get off" (R. 21; Tr. 15, 24).

At length, Clement found his work clearance from Local 389 and showed it to Aguilar, who expressed some skepticism at its authenticity and asked Clement what his wages were. Clement answered that he made $5 an hour. Aguilar laughed and said that "that was really funny . . . Hans Eggli never paid anybody in his life $5 an hour." Clement again protested that he was not working for Eggli. Aguilar answered that ". . . this was a Union job and he didn't want any non-Union people on this job . . . that he was really firm against it . . ." and that he would "work days, nights or Sundays, whatever he had to, to make sure there wasn't any non-Union help on the job." Clement reiterated that his employer, B & C, was a union firm and he "didn't see too much of what the problem was although [he] didn't understand the technicalities involved in this type of thing" (R. 21; Tr. 17). Aguilar replied that Clement "could get himself caught up in between a labor dispute here if [he] didn't get off the job." Aguilar added that "he could go to Mr. White . . . the general contractor . . . and see to it that he closed down the job . . . the building was almost done . . . but the windows were left to be cleaned, and the building before it could be turned over had to be cleaned, and the win-

dows had to be washed . . . he could pull the window washers off. The window washers were all Union. He could pull them off the job and stop the job that way . . ." Aguilar said that "he would suggest very strongly that [Clement] leave, that there was a labor dispute on this thing. He was going to get Hans off the job . . . he was familiar with Hans Eggli's operation, and he knew that he was non-Union. He definitely wasn't going to work on that job, and . . . he wanted [Clement] off and . . . he would appreciate it if [Clement] would leave" (R. 21; Tr. 17-18). Aguilar added, ". . . in a situation like this, you never know what is going to happen" (Tr. 24). After concluding his remarks, Aguilar walked over to his car in order to determine whether or not B & C was listed in a book containing the names of firms in the area which were in good standing with the Union. At the same time, Clement saw Eggli on the other side of the building. He approached Eggli, told the latter about his conversation with Aguilar, and informed him that he "didn't want to get caught in the middle because [B & C had] Union help because [they were] a Union firm, and [they couldn't] afford to get caught in the middle of these things." Clement told Eggli that he wanted to call his father. Eggli said, "Well, go ahead. I don't want you to get in any type of trouble on this thing" (R. 22; Tr. 18-19). Clement went to Aguilar, who told the former that his (Aguilar's) book listed B & C as a "good Union firm"; he declared, however, that "it would be best" if they left the job (R. 22; Tr. 20). Clement called

his father, the president of B & C, and explained the situation. After some deliberation, his father called back and told Clement "to get off the job . . . [because] this guy could get [them] in trouble down there, and [they] couldn't afford to do that . . . [they] had too many other jobs going with the other contractors" (R. 22; Tr. 20-21). Clement then left the job, although his work was not yet completed. B & C never did finish the job for which Eggli had retained them (R. 22; Tr. 21).

C. *Respondent threatens White's vice-president with a work stoppage*

On April 7, 1967, John Pierini, respondent's business representative, telephoned Conroy Betts, White's vice-president. Pierini told Betts that "one of his [Pierini's] men had been out on the job and that [White's] landscaping contractor, Hans Eggli, was using non-Union laborers." Pierini added that "having non-Union laborers on the job could create some problems and he might have to [pull] his men off the job if they continued to work on the job" (R. 23; Tr. 66). Betts asked Pierini if the latter had spoken to Eggli. Pierini replied that he had had "several conversations with [Eggli] but apparently Eggli had no intention of signing an agreement with them." Betts asked what Pierini wanted him to do. Pierini replied that Betts should call Eggli and try to persuade the latter to "sign up with the Union." If Eggli refused, Betts was to tell him that "if he continued to use non-Union laborers [Betts] might have

to remove him from the job and have someone else complete his work." Betts stated that he considered this to be Pierini's function but that he would call Eggli as requested. Pierini repeated that "he would pull his men off the job" if White permitted Eggli to continue working on the project with non-union labor (R. 23-24; Tr. 67-68).

Following this conversation with Pierini, Betts telephoned Eggli and told him that the project was in danger of being shut down because of him, that White did not want "any work stoppages on the job and that if [Eggli] couldn't straighten out the matter [Betts] would have to take him off the job." Eggli assured Betts that "he would take care of it," and Betts said that he would "[leave] it strictly in [Eggli's] hands" (R. 25; Tr. 67-68). Subsequently, Eggli finished his assigned job by working on weekends, although personnel on that project did not normally work weekends (R. 25; Tr. 62-63, 75, 85-86).

### II. The Board's Conclusion and Order

On the foregoing facts, the Board found that respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging Clement to refuse to perform services which B & C had contracted to perform for Eggli and by threatening and coercing B & C and White with the object of forcing these employers to cease doing business with Eggli, all for the purpose of requiring Eggli to bargain with respondent even though respondent had not been certified as the collective bargaining representative of

Eggli's employees. The Board's order requires respondent to cease and desist from the unfair labor practices found and to post the usual notices (R. 30-31, 37-38).

## ARGUMENT

### Substantial Evidence on the Whole Record Supports the Board's Finding That Respondent Violated Section 8(b)(4)(i) and (ii)(B) of the Act

Section 8(b)(4)(i) and (ii)(B) of the Act, as amended in 1959 (see *infra* p. 20) provides that a union or its agents may not "induce or encourage any individual" employed in an industry affecting interstate commerce, or "threaten, coerce or restrain any person" in commerce, where an object is either to force the cessation of business relations between a neutral employer and any other person, or to force any other employer to bargain as the representative of his employees unless the union has been certified by the Board as the representative of such employees. This section renders unlawful the use of a secondary boycott to implicate neutral employers in disputes not their own. See *N.L.R.B.* v. *District Council of Painters No. 48 and Paint Makers Local Union No. 1232*, 340 F. 2d 107 (C.A. 9), cert. denied, 381 U.S. 914; *Retail Fruit and Vegetable Clerks Union, Local 1017* v. *N.L.R.B.*, 249 F. 2d 591 (C.A. 9).

In the instant case, as set forth in the Statement, White, a union firm and the general contractor for construction of the McCullough Building at Stanford University, subcontracted the landscaping work to

Eggli, a non-union firm which had consistently refused to "sign up with the Union." Eggli engaged a union firm, B & C, to dig trenches as part of the landscaping. In displeasure over discovering Eggli's use of "non-union personnel" on the project, respondent quickly resorted to pressure to remove that employer from the jobsite. This included an insistence by Union Representative Aguilar that Jerry Clement, B & C's sole worker at the site, leave the job or respondent would close it down by "pulling off" every union employee. This was accompanied by an admonition that Clement should not get involved in the middle of a labor dispute, that respondent "was going to get Hans [Eggli] off the job" as he was non-union, and that Clement should leave the project as "you never know what is going to happen." As a result, B & C did withdraw. That Aguilar's statements to Clement were calculated to "induce or encourage" an employee of a neutral employer to engage in a work stoppage, within the proscription of Section 8(b)(4)(i)(B), is manifest. *N.L.R.B.* v. *District Council of Painters, etc., supra*, 340 F. 2d at 110-111; *N.L.R.B.* v. *Local 294, Teamsters*, 298 F. 2d 105, 106-107 (C.A. 2); *N.L.R.B.* v. *Plumbers' Union of Nassau County*, 299 F. 2d 497, 500-501 (C.A. 2); *N.L.R.B.* v. *Highway Truckdrivers and Helpers, Local 107*, 300 F. 2d 317, 319-320 (C.A. 3). Moreover, as the Board further concluded (R. 13) the application of such pressure against B & C —that is, a work stoppage by its employee— also falls squarely within the interdiction of subsec-

tion (ii), the purpose of which is not only to foreclose threats to neutral employers of such "labor trouble and other consequences," [5] but also to prohibit carrying out such threats by means of a "strike or other economic retaliation." [6] Cases cited *supra*. See, in addition, *N.L.R.B.* v. *International Hod Carriers, Local 1140*, 285 F. 2d 397, 402-403 (C.A. 8), cert. denied, 366 U.S. 903.

The pressure brought against White was equally unambiguous. Union Representative Aguilar complained of Eggli's non-union status and told Superintendent McCullough that Eggli would have to "leave the job," and coupled the demand with a threat to "ask his Union personnel to leave" if Eggli remained. The following day Business Agent Pierini telephoned Betts, White's vice president, and insisted that Eggli's men be pulled off the job, threatening to call a work stoppage if his wishes were not followed. Pierini then asked Betts to persuade Eggli to sign a contract with respondent. When Betts hesitated, Pierini suggested that Eggli be told that Betts would have to remove him from the project if he continued to use non-union labor. Pierini then repeated Aguilar's earlier threat to "pull his men" if Eggli were permitted to continue with non-union help. These utterances were unquestionably "threats, coercion, and restraint" against a neutral employer, condemned by subsection (ii). Cases above-cited.

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[5] 105 Cong. Rec. 15532, II Leg. Hist. 1568; see 105 Cong. Rec. 8874, II Leg. Hist. 1750.

[6] 105 Cong. Rec. 14347, 15544, II Leg. Hist. 1523, 1581.

The defenses put forth by respondent were properly rejected.

1. As shown, respondent induced Clement to stop performing B & C's work, which was being done under a contract with Eggli. This was not a legitimate, peaceful appeal to a managerial or supervisory official of a secondary employer to use his managerial discretion to cease doing business with an employer with whom a union has a primary dispute. While such appeals are not proscribed, subsection (i) does prohibit union attempts to induce or encourage managerial officials to cease performing their duties for the secondary employer. *N.L.R.B.* v. *Servette, Inc.*, 377 U.S. 46, 50. Clement was normally a working foreman. As the Board noted, however, he was the sole B & C employee required at the site, and was engaged as an operator of B & C equipment (R. 26). Union Representative Aguilar plainly viewed Clement in only that capacity, for Aguilar was not acquainted with B & C and made no effort at a direct appeal to its management. Rather, Aguilar immediately inquired of Clement's union affiliation. When Clement demonstrated that he worked for a union firm and was a member of a sister local, Aguilar demanded he quit working on a project tainted with the presence of a non-union employer (Eggli). This was not merely an appeal to managerial discretion to aid a union in its dispute with another employer. Rather, it was a traditional appeal to withhold services from an employer in the name of union loyalty. In the above circumstances, as this Court recognized in re-

jecting a similar reliance on the holding in *Servette*, the appeal is not "directed at the foreman's [managerial] discretion alone" and is "in violation of Section 8(b)(4)(i)(B)." *N.L.R.B.* v. *District Council of Painters, etc., supra* at 340 F. 2d 111-112. That something other than a management decision was intended here is confirmed by Aguilar's implication that Clement could get in trouble if the demand was not met. See *I.B.E.W.* v. *N.L.R.B.*, 341 U.S. 694, 700-701; *N.L.R.B.* v. *Local 294, Teamsters, supra*, 298 F. 2d at 106-108. And that Clement left and did not return after conferring with his father, B & C's president, is not of significance. This capitulation by a secondary employer whose work force is being subjected to union pressures is not unusual.

2. Union representatives Aguilar and Pierini denied that the incriminating utterances were made. Aguilar thus testified that he made no demands of Clement after confirming his union affiliation and that of B & C; further, that his statements to Superintendent McCullough did not go beyond a declaration that having Eggli on the job violated the collective bargaining agreement with White, and a request that McCullough arrange a meeting between respondent and Eggli to resolve the dispute (R. 18-19; Tr. 98-99). Pierini testified that he called Vice-president Betts merely to tell him that under a provision in the parties' contract White must procure Eggli's signature to the agreement (R. 24; Tr. 137-143). The Trial Examiner, however, explained at length why demeanor, corroboration, and other such factors dic-

tated his crediting of testimony which was denied by respondent's officials (R. 3-10). The Board affirmed these credibility determinations, since respondent made no showing that the testimony credited was inherently improbable on this record or that some irrational basis was used in deciding whom to believe (R. 37 n. 2). In these circumstances, the reviewing court will not disturb the resolution of conflicting testimony made by the trier of fact. See, e.g., *N.L.R.B.* v. *Int'l. Longshoremen's Warehousemen's Union, Local 10, et al.*, 283 F. 2d 558, 562-563 (C.A. 9); *Shattuck Denn Mining Corp.* v. *N.L.R.B.*, 362 F. 2d 466, 469-470 (C.A. 9).

3. Respondent plainly sought to achieve the objectives proscribed by the statute. The dispute with Eggli, the primary employer, over his non-union status generated and was the express premise for the economic pressure brought against White and B & C —to whom it was made clear that such pressure would subsist until Eggli ended his non-union status by signing a union contract. White and B & C were powerless, however, to make this decision for Eggli. They were thus secondary employers who were being pressured to cancel construction contracts as a means of resolving respondent's dispute with Eggli. Respondent's attempt to interfere or to curtail those contractual relationships by improper means is a classic example of forcing a cessation of business with a disfavored employer which the Act prohibits. *N.L.R.B.* v. *Denver Bldg. and Constr. Trades Council*, 341 U.S. 675, 688; *I.B.E.W.* v. *N.L.R.B.*, *supra*, 341 U.S. at 699-700. Furthermore, the demand that

Eggli be importuned to terminate his non-union status by signing a union contract establishes beyond doubt that respondent was also bringing secondary pressure to force Eggli "to recognize or bargain," in further violation of Section 8(b)(4)(i) and (ii)(B) of the Act. *N.L.R.B.* v. *International Union of Operating Engineers, Local Union No. 12*, 293 F. 2d 319, 322-323 (C.A. 9); *N.L.R.B.* v. *International Hod Carriers, Local 1140*, 285 F. 2d 397, 398, 403 (C.A. 8), cert. denied, 366 U.S. 903; *N.L.R.B.* v. *Local 825, International Union of Operating Engineers, AFL-CIO.* 315 F. 2d 695, 699 (C.A. 3); compare *Scobell Chemical Co.* v. *N.L.R.B.*, 267 F. 2d 922, 925 (C.A. 2).

Respondent asserted that it had a right to bring pressure against White to secure his adherence to the parties' contract (see, R. 19; Resp. Exhs. 1 & 2). Allegedly the contract contained no unlawful requirement that all subcontractors be union signatories, but only a "primary" clause requiring that unit work which was subcontracted be performed at area wage standards.[7] See, *Orange Belt District Council of Painters # 48, AFL-CIO, et al.*, 153 NLRB 1196,

[7] The Board noted, however, that the clause in the contract was nominally a secondary provision in violation of the "hot cargo" prohibition of Section 8(e) of the Act, but exempted under the construction industry provise to that section, discussed *infra* (R. 15). See, *N.L.R.B.* v. *Bangor Building and Trades Council*, 278 F. 2d 287, 290 n. 4 (C.A. 1); *District 9, Machinists* v. *N.L.R.B.*, 315 F. 2d 33, 36-37 (C.A. D.C.); *Meat and Highway Drivers Local 710* v. *N.L.R.B.*, 335 F. 2d 709, 717 (C.A. D.C.). See also, *N.L.R.B.* v. *Joint Council of Teamsters, No. 38*, 338 F. 2d 23, 28 (C.A. 9).

enforced 365 F. 2d 540 (C.A. D.C.). Cf. *National Woodwork Manufacturers Association, et al.* v. *N.L.R.B.*, 386 U.S. 612, 638-639; *Houston Contractors Ass'n.* v. *N.L.R.B.*, 386 U.S. 664. As shown, however, the Board discounted the testimony of respondent's officials avowing that White's alleged contractual obligation to safeguard unit wage standards was the limit of respondent's concern. Respondent thus gave no indication that its sole and primary dispute was with White over the preservation and integrity of unit work. There is not, as the Trial Examiner observed (R. 15-16) the slightest suggestion in the record that respondent even considered that the landscaping work Eggli was performing was related to the unit work of White's employees. Furthermore, respondent's demand on White, and Eggli, went far beyond a request that work at the site be performed at area standards. The demand was that Eggli use union personnel and sign a union agreement. Finally, to further that demand pressure was brought against B & C, though it was White who allegedly was breaching a duty to maintain area standards and B & C, a union firm, was meeting those standards.

Respondent, in short, considered Eggli an unacceptable subcontractor on the project because of his non-union status and other labor policies. Respondent attempted to make Eggli alter these policies by forcing neutral employers—White and B & C—to cancel their subcontracts with Eggli. This was, as demonstrated, a clear form of secondary pressure

against a disfavored employer. Accordingly, the Board properly rejected the familiar claim that the employer with whom the union had a contract (i.e., White) was the "primary" employer in the dispute and subjected to legitimate pressures. *N.L.R.B.* v. *Bangor Building Trades Council*, *supra*, 278 F. 2d at 289-290; *Local 636, Plumbers* v. *N.L.R.B.*, 278 F. 2d 858, 864 (C.A.D.C.). Compare, *Northeastern Indiana Bldg. & Constr. Trades Council, et al.*, 148 NLRB 854, enforcement denied on unrelated grounds, 352 F. 2d 696 (C.A. D.C.); *N.L.R.B.* v. *International Brotherhood of Teamsters, etc., Local 294*, 342 F. 2d 18, 22 (C.A. 2). See also, *National Woodwork Mfg. Ass'n., et al.* v. *N.L.R.B.*, *supra*, 386 U.S. at 644-646; *Houston Contractors Ass'n.* v. *N.L.R.B.*, *supra*, 386 U.S. at 668.

As the Board further concluded (R. 15) respondent may place no reliance on the proviso to Section 8(e) of the Act, which grants parties in the construction industry the privilege to enter into agreements whereby the contracting employer will engage only union subcontractors on the jobsite (*infra*, pp. 20-21). By virtue of the proviso, this otherwise unlawful objective may be made a contractual arrangement. But the union is limited to judicial enforcement. The proviso does not permit the union to use economic pressure to achieve a secondary boycott condemned by the Act. *N.L.R.B.* v. *International Union of Operating Engineers, Local Union No. 12*, *supra*, 293 F. 2d at 323; *N.L.R.B.* v. *I.B.E.W., Local Union No. 683, AFL-CIO*, 359 F. 2d 385 (C.A. 6); *Local 5, United Ass'n., etc.* v. *N.L.R.B.*, 321 F. 2d 366, 367-

369 (C.A. D.C.), cert. denied, 375 U.S. 921; *N.L.R.B.* v. *International Brotherhood of Teamsters, etc., Local 294, supra,* 342 F. 2d at 22. See *Local Union No. 48, etc.* v. *Hardy Corp.,* 332 F. 2d 682 (C.A. 5).

## CONCLUSION

For the foregoing reasons, it is respectfully requested that the Board's order be enforced in full.

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October 1967.

## CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

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## APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

> (4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, that nothing contained in this clause (B) shall be construed to make unlawful, any primary strike or primary picketing;
>
> * * * *

[Sec. 8] (e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied,

whereby such employer ceases or refrains or agrees to cease or refain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8 (b) (4) (B) the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

* * * *

Sec. 10(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining

order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record * * * Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the * * * Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

## APPENDIX B

### Pursuant to Rule 18(f) of the Rules of the Court

(Page references are to stenographic transcript)

Board Case No. 20-CC-513

### GENERAL COUNSEL'S EXHIBITS

| No. | Identified | Received |
|---|---|---|
| 1(a) through 1(s) | 8 | 8 |
| 2 | 82 | 82 |

### RESPONDENT'S EXHIBITS

| No. | Identified | Received |
|---|---|---|
| 1 | 135 | 135 |
| 2 | 136 | 136 |

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